

Unofficial Draft Copy

As of: April 16, 2012 (2:40pm)

LC9002

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act creating the state parks, recreation, and heritage board; providing powers and duties; granting rulemaking authority; renaming the fish, wildlife, and parks commission; transforming the Montana heritage preservation and development commission into an advisory council; amending sections 2-15-3110, 2-15-3113, 2-15-3401, 2-15-3402, 2-15-3404, 16-4-205, 16-4-305, 22-3-1001, 22-3-1002, 22-3-1003, 22-3-1004, 23-1-101, 23-1-102, 23-1-106, 23-1-108, 23-1-110, 23-1-121, 23-1-122, 23-2-301, 23-2-403, 23-2-404, 23-2-408, 23-2-410, 23-2-502, 23-2-506, 23-2-525, 23-2-529, 23-2-531, 23-2-601, 23-2-641, 23-2-801, 23-2-806, 37-47-310, 75-1-220, 77-1-405, 85-2-102, 87-1-101, 87-1-106, 87-1-202, 87-1-209, 87-1-218, 87-1-301, 87-1-303, 87-1-306, 87-1-401, 87-1-622, and 87-4-432, MCA; repealing section 23-2-652, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. State parks, recreation, and heritage board -- composition. (1) There is a state parks, recreation, and heritage board.

(2) The board consists of five members appointed by the governor, as prescribed in 2-15-124. The governor shall appoint one member from each of the following districts:

occurs.

(6) The board is designated as a quasi-judicial board for purposes of 2-15-124, except that the requirement that at least one member be an attorney does not apply.

(7) The administrator of the division that oversees state parks is the secretary of the board.

NEW SECTION. **Section 2. Powers and duties of board -- rulemaking.** (1) Except as provided in subsection (2), for state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 22, chapter 3, part 10, Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the board shall:

(a) set the policies of and provide direction to the department for:

(i) the management, protection, conservation, and preservation of these properties, lands, and waters in a way that promotes their importance to tourism and the economic health of Montana;

(ii) coordinating, integrating, promoting, and furthering opportunities for education and recreation at these sites, including but not limited to camping, hiking, snowmobiling, off-highway vehicle use, horseback riding, mountain biking, and boating;

(b) work with the commission to maintain hunting and angling

these properties, lands, and waters.

(2) Pursuant to 87-1-301(1), the board does not oversee department activities related to the administration of fishing access sites.

(3) The members of the board shall hold quarterly or other meetings for the transaction of business at times and places considered necessary and proper. The meetings must be called by the presiding officer or by a majority of the board and must be held at the time and place specified in the call for the meeting. A majority of the members constitutes a quorum for the transaction of any business. The board shall keep a record of all the business it transacts. The presiding officer and secretary shall sign all orders, minutes, or documents for the board.

Section 3. Section 2-15-3110, MCA, is amended to read:

"2-15-3110. Livestock loss board -- purpose, membership, and qualifications. (1) There is a livestock loss board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

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Section 5. Section 2-15-3401, MCA, is amended to read:

"2-15-3401. Department of fish, wildlife, and parks -- head. There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The director is the secretary of the fish and wildlife commission established in 2-15-3402."

{ Internal References to 2-15-3401:

2-17-803 x	17-7-161 x	23-2-301 a	23-2-403 a
23-2-536 x	87-1-101 a	87-1-256x }	

Section 6. Section 2-15-3402, MCA, is amended to read:

"2-15-3402. Fish, and wildlife, ~~and parks~~ commission. (1)
There is a fish, and wildlife, ~~and parks~~ commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

Section 7. Section 2-15-3404, MCA, is amended to read:

"2-15-3404. Fish, wildlife, and parks crimestoppers board.

(1) There is a fish, wildlife, and parks crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks, as follows:

(i) a person within the department responsible for the enforcement of fish and wildlife laws;

(ii) a member of a hunter's, angler's, or conservation group;

(iii) a member who is actively engaged in agricultural production; and

(iv) a member of the public with an interest in parks and recreation.

(b) The fifth member is a member of the fish, and wildlife, ~~and parks~~ commission who must be designated by the commission.

(3) The board shall elect a presiding officer from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121."

retail liquor licenses.

(b) The department may issue a wine amendment pursuant to 16-4-105(2) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.

(2) ~~The Montana heritage preservation and development commission~~ department of fish, wildlife, and parks may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.

(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail liquor licenses.

(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that ~~have been~~ were transferred to the former Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999."

{ Internal References to 16-4-305:
16-4-205a }

Section 10. Section 22-3-1001, MCA, is amended to read:

"22-3-1001. Purpose -- definitions. (1) The purpose of this part is to acquire and manage, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, are genuinely representative of the state's culture and history, and demonstrate the ability to become economically self-supporting. ~~The Montana heritage~~

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Montana historical society, the director of the department of fish, wildlife, and parks, and the director of the department of commerce shall serve as members. Of the members appointed by the governor department:

- (a) one member must have extensive experience in managing facilities that cater to the needs of tourists;
- (b) one member must have experience in community planning;
- (c) one member must have experience in historic preservation;
- (d) two members must have broad experience in business;
- (e) one member must be a member of the tourism advisory council established in 2-15-1816;
- (f) one member must be a Montana historian; and
- (g) two members must be from the public at large.

(3) Except for the initial appointments, members appointed by the governor department shall serve 3-year terms. Legislative appointees shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) The advisory council shall review and make recommendations to the board regarding:

(a) the management, use, conservation, and preservation of artifact collections, historic sites, and heritage resources administered by the board; and

(b) the acquisition or sale of properties and lands administered pursuant to this part.

~~(4) — (a) The commission may employ:~~

construction permitted under the ~~commission's~~ department's jurisdiction pursuant to this part.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with ~~commission~~ department rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties.

(g) Contracts may include the lease of property managed by the ~~commission~~ department. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the ~~commission~~ department may not contract for the construction of a building, as defined in 18-2-101, in excess of \$300,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the ~~Montana department of fish, wildlife, and parks~~. Funding for these projects must pass through directly to the ~~commission~~ department.

(b) The ~~commission~~ department may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds \$300,000 without legislative consent if the ~~commission~~ department determines that waiting for legislative consent would cause unnecessary damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in

department shall provide each volunteer with workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The ~~commission~~ department may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(7) The ~~commission~~ board shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and ~~commission~~ board members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the ~~commission~~ board only if the recommendation is supported by a majority of the members of the subcommittee.

(8) The ~~commission~~ board shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

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part. Funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage and protect the remaining personal property.

(12) Prior to the convening of each regular session, the ~~commission~~ department shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the acquisition or sale of any assets."

{ Internal References to 22-3-1003:
18-2-102 x }

Section 13. Section 22-3-1004, MCA, is amended to read:

"22-3-1004. **Montana heritage preservation and development account.** (1) (a) There is a Montana heritage preservation and development account in the state special revenue fund and in the federal special revenue fund.

(b) The ~~Montana heritage preservation and development commission~~ department shall deposit any federal money that the ~~commission~~ department obtains into the appropriate account provided for in this section.

(2) Money deposited in the accounts must be used for:

(a) the purchase of properties in Virginia City and Nevada City;

(b) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of

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(d) "Director" means the director of the department of fish, wildlife, and parks as provided in 2-15-3401."

{ Internal References to 23-1-101:
23-2-402x 23-2-407x }

Section 15. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of ~~fish, wildlife, and parks~~. (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. The department may by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state ~~historical~~ historic sites. The department, with the consent of the ~~commission~~ board, may acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).

(2) The department may accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land commissioners shall specifically approve

(2) ~~Any A person who violates any of the rules made by the department this section or a rule established pursuant to subsection (1) this section~~ is guilty of a misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months.

(3) ~~It is unlawful and a misdemeanor punishable as provided in subsection (2) to A person may not~~ refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

- (a) of search, seizure, and arrest;
- (b) to investigate activities in this state regulated by this chapter and rules of the department and the ~~fish, wildlife, and parks commission board~~; and
- (c) to report violations to the county attorney of the county in which they occur."

{ Internal References to 23-1-106: None. }

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statewide and locally, and to opportunity for a public meeting and public comment on the advisability and acceptability of the proposal. Rules to govern the notice, meeting, and comment process must be adopted:

(a) for state parks by the board; and

(b) for fishing access sites by the commission.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

(b) the capacity of the park or fishing access site for development;

(c) environmental impacts associated with the improvement or development;

(d) the long-range maintenance of the improvements;

(e) the protection of natural, cultural, and historical park or fishing access site features;

(f) potential impacts on tourism; and

(g) site-specific modifications as they relate to the park or fishing access site system as a whole."

{Internal References to 23-1-110:
2-17-532 x}

Section 19. Section 23-1-121, MCA, is amended to read:

"23-1-121. Park rangers -- qualifications -- powers and duties. (1) The department is authorized to establish a corps of

chapters 1 and 2 of this title, except chapter 2, part 7, or rules of the department, the board, or the ~~fish, wildlife, and parks~~ commission;

(b) enforce the disorderly conduct and public nuisance laws under 45-8-101 and 45-8-111 as they apply to the operation of motorboats on waters within areas managed by the department under this part; and

(c) exercise other powers of peace officers in the enforcement of:

(i) laws relating to parks and outdoor recreation contained in chapters 1 and 2 of this title, except chapter 2, part 7;

(ii) rules of the department, the board, and the ~~fish, wildlife, and parks~~ commission; and

(iii) judgments obtained for violations of the laws and rules specified in this subsection (2)(c)."

{ Internal References to 23-1-122: None. }

Section 21. Section 23-2-301, MCA, is amended to read:

"23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than

obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation

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{ Internal References to 23-2-404:
23-2-407x }

Section 24. Section 23-2-408, MCA, is amended to read:

"23-2-408. Rulemaking authority. The ~~commission~~ board has authority to provide for the administration of the Smith River waterway. The ~~commission~~ board may adopt rules to:

(1) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:

(a) consider the tolerance of adjacent landowners to recreational use;

(b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public.

(3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the

this part and rules of the department and the commission and board; and

(c) to report violations to the county attorney of the county in which they occur."

{ Internal References to 23-2-410: None. }

Section 26. Section 23-2-502, MCA, is amended to read:

"23-2-502. **Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Board" means the state parks, recreation, and heritage board established in [section 1]. For the purposes of this part, the board has jurisdiction over all waters immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters administered pursuant to Title 23, chapter 2, part 4.

~~(1)~~(2) "Certificate of number" means the certificate issued by the department of justice, an authorized agent, as defined in 61-1-101, or a county treasurer to the owner of a motorboat or sailboat, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(3) "Commission" means the fish and wildlife commission established in 2-15-3402. For the purposes of this part, the commission has jurisdiction over all waters that are not immediately adjacent to lands administered pursuant to Title 23, chapter 1, and all waters not administered pursuant to Title 23, chapter 2, part 4.

lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

~~(11)~~(13) "Passenger" means each person carried on board a vessel other than:

- (a) the owner or the owner's representative;
- (b) the operator;
- (c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or
- (d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

~~(12)~~(14) "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(13)~~(15) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(14)~~(16) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the

numbering system.

~~(19)~~(21) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(20)~~(22) "Waters of this state" means any waters within the territorial limits of this state."

{ Internal References to 23-2-502:

15-68-101 x 30-11-701 x 30-14-2501x 61-4-201 x
61-4-222 x 61-4-402x }

Section 27. Section 23-2-506, MCA, is amended to read:

"23-2-506. Enforcement. (1) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, ~~and the fish, wildlife, and parks commission, and board~~; and

(c) to report violations to the county attorney of the county in which they occur.

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of this part, as amended."

{ Internal References to 23-2-506: None. }

operator.

(c) The ~~fish, wildlife, and parks~~ commission and board may by rule determine areas where establishment of a 200-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic."

{ Internal References to 23-2-525:
23-2-507x }

Section 29. Section 23-2-529, MCA, is amended to read:

"23-2-529. Waterskis and surfboards. (1) A person may not operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on waterskis, a surfboard, or similar device unless the operator is accompanied by an observer. If the operator is 12 years of age or younger, there must be a second person, at least 18 years of age, in the vessel to observe the person being towed. The ~~fish, wildlife, and parks~~ commission and board shall adopt rules regarding the proper observation and safe towing of persons on waterskis or similar devices, based on density of use of a body of water.

(2) A person may not operate a motorboat or vessel towing a person engaged in waterskiing, surfboarding, or similar activity or towing some other contrivances nor may a person engage in those activities at any time between the hours from sunset to sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this part.

(3) All right-of-way rules applying to a towing vessel apply to a person being towed."

Section 31. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in ~~23-2-601,~~
~~23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621,~~
~~23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through~~
~~23-2-644~~ this part, unless the context requires otherwise, the
following definitions apply:

(1) "Board" means the state parks, recreation, and heritage
board established in [section 1].

~~(1)~~(2) "Certificate of registration" means the owner's
receipt evidencing payment of fees due in order for the
snowmobile to be validly registered.

~~(2)~~(3) "Certificate of title" means the document issued by
the department of justice as prima facie evidence of ownership.

(4) "Commission" means the fish and wildlife commission
established in 2-15-3402.

~~(3)~~(5) "dbA" means sound pressure level measured on the "A"
weight scale in decibels.

~~(4)~~(6) "Department" means the department of fish, wildlife,
and parks of the state of Montana.

~~(5)~~(7) "New snowmobile" means a snowmobile that has not
been previously sold to an owner.

~~(6)~~(8) "Operator" includes each person who operates or is
in actual physical control of the operation of a snowmobile.

~~(7)~~(9) "Owner" includes each person, other than a
lienholder or person having a security interest in a snowmobile,
that holds a certificate of title to a snowmobile and is entitled
to the use or possession of the snowmobile.

grooming contractors.

(16) "Snowmobiler" means any person operating or riding a snowmobile."

{ Internal References to 23-2-601:

15-1-122 x	23-2-601 a	23-2-614 x	23-2-614 x
23-2-614 x	23-2-631 x	23-2-631 x	23-2-631 x
23-2-634 x	23-2-634 x	23-2-641 a	23-2-641 a
23-2-642 x	23-2-642 x	23-2-642 x	23-2-644 x
23-2-652 r	30-11-701 x	30-14-2501 x	61-4-201 x
61-4-222 x	61-4-402 x}		

Section 32. Section 23-2-641, MCA, is amended to read:

"23-2-641. Enforcement. (1) With respect to the sale of any new snowmobile that is subject to the provisions of ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part, the attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ this part.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

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~~(2) Off-highway vehicle~~ (b) The term does not include:

~~(a)(i)~~ vehicles designed primarily for travel on, over, or in the water;

~~(b)(ii)~~ snowmobiles; or

~~(c)(iii)~~ except as provided in 23-2-804, vehicles otherwise issued a certificate of title and registered under the laws of the state, unless the vehicle is used for off-road recreation on public lands."

{ Internal References to 23-2-801:

15-68-101 x 23-1-128 x 30-11-701x 61-4-201 x
61-4-222 x 61-4-402x }

Section 34. Section 23-2-806, MCA, is amended to read:

"23-2-806. **Enforcement.** (1) The department of fish, wildlife, and parks enforcement personnel, park rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this part and rules of the department, board, and ~~the fish, wildlife, and parks~~ commission; and

(c) to report violations to the county attorney of the county in which they occur.

business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, and wildlife, ~~and parks~~ commission and that a property right does not attach to the transferred river-use days.

(b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted by the state parks, recreation, and heritage board pursuant to 23-2-408."

{ Internal References to 37-47-310: None. }

Section 36. Section 75-1-220, MCA, is amended to read:

"75-1-220. **Definitions.** For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

(2) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, and wildlife, ~~and parks~~ commission, as provided for in 2-15-3402, and

action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment within the borders of Montana as required under this part.

(6) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

(7) "Public scoping process" means any process to determine the scope of an environmental review.

(8) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

within and surrounded by a navigable river, stream, or lake is limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the ~~fish, wildlife, and parks commission~~ state parks, recreation, and heritage board established in [section 1];

(c) footings or pilings necessary for the construction of a bridge; and

(d) oil and gas leasing.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises

project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in

ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district

chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{ Internal References to 85-2-102:

75-5-410 82-4-355 85-2-141 85-2-340 }

Section 39. Section 87-1-101, MCA, is amended to read:

"87-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Board" means the state parks, recreation, and heritage board provided for in [section 1].

~~(1)~~ (2) "Commission" means the fish, and wildlife, ~~and parks~~ commission provided for in 2-15-3402.

~~(2)~~ (3) "Department" means the department of fish, wildlife, and parks provided for in Title 2, chapter 15, part 34.

~~(3)~~ (4) "Director" means the director of fish, wildlife, and parks provided for in 2-15-3401.

~~(4)~~ (5) "Warden" means a state fish and game warden."

{ Internal References to 87-1-101: None. }

Section 40. Section 87-1-106, MCA, is amended to read:

(iii) any other method that is readily available to the public.

(b) The method for notifying the public of the closure of a special season must be stated in the rule that establishes the special season.

(4) Public notification of emergency closures of department lands, public waterways, and hunting, fishing, and trapping seasons that are based on public health, safety, and welfare must be made in the manner and to the extent that the department considers necessary in light of the facts surrounding the emergency, including, when practical, onsite posting of the emergency closure."

{Internal References to 87-1-202: None.}

Section 42. Section 87-1-209, MCA, is amended to read:

"87-1-209. (Temporary) Acquisition and sale of land or water. (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon land or water for the purposes listed in this subsection. Any acquisition of land or water rights for purposes of this subsection, except that portion of acquisitions made with funds provided under 87-1-242(1), must include an additional 20% above the purchase price to be used for maintenance of land or water acquired by the department. The additional amount above the

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disposal of state land and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission or board, may convey department land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the land or water rights to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the land or water right is situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance

without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) Subject to 87-1-218, the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land. (Terminates June 30, 2013--sec. 8, Ch. 427, L. 2009.)

87-1-209. (Effective July 1, 2013) Acquisition and sale of lands or waters. (1) Subject to 87-1-218, the department, with the consent of the commission or board and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries or nursery ponds;
- (b) as lands or water suitable for game, bird, fish, or

or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair

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and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

{ Internal References to 87-1-209:

23-1-102	23-1-126	23-1-127	70-30-102
87-1-218	87-1-230	87-1-242	87-1-242
87-1-301	87-1-301	87-1-303	}

Section 43. Section 87-1-218, MCA, is amended to read:

"87-1-218. Notice of proposed land acquisitions. (1) For all land acquisitions proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the county where the proposed acquisition is located.

(2) The notice must be provided at least 30 days before the proposed acquisition appears before the commission or board for its consent.

(3) The notice must include:

(a) a description of the proposed acquisition, including acreage and the use proposed by the department;

(b) an estimate of the measures and costs the department plans to undertake in furtherance of the proposed use, including operating, staffing, and maintenance costs;

(c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the department

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~~department of interests in land or water, except as provided in 87-1-209(4);~~

~~—— (f) shall review and approve the budget of the department prior to its transmittal to the budget office;~~

~~—— (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000, and~~

~~—— (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1) (h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.~~

~~—— (2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.~~

~~—— (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's~~

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~~the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.~~

~~—— (6) (a) The commission may adopt rules to:~~

~~—— (i) limit the number of nonresident mountain lion hunters in designated hunting districts, and~~

~~—— (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.~~

~~—— (b) The commission shall consider, but is not limited to consideration of, the following factors:~~

~~—— (i) harvest of lions by resident and nonresident hunters,~~

~~—— (ii) history of quota overruns,~~

~~—— (iii) composition, including age and sex, of the lion harvest,~~

~~—— (iv) historical outfitter use,~~

~~—— (v) conflicts among hunter groups,~~

~~—— (vi) availability of public and private lands, and~~

~~—— (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.~~

~~—— (7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:~~

~~—— (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons,~~

~~—— (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and~~

(f) except as provided in [section 2], shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) except as provided in [section 2], shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

for wildlife, as determined by the commission.

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

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lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) Except as provided in [section 2], 23-2-502(1), and 87-1-301(7), the commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee

"87-1-306. Designation of certain river stretches as no-wake waters -- personal watercraft use prohibited. (1) In the interest of public health, safety, and welfare and protection of property and public resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their reservoirs.

(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake speed.

(3) This section does not apply to the use of the designated waters for search and rescue, official patrol, or scientific purposes.

(4) This section may not be construed to limit the authority of the commission, board, or department to enact by administrative rule or to enforce any other restrictions on any surface waters in the interests of public health, safety, or welfare, the protection of property or public resources, or the resolution of conflicts between users of motorized and nonmotorized boats."

{Internal References to 87-1-306: None.}

Section 47. Section 87-1-401, MCA, is amended to read:

"87-1-401. Director to carry out policies. The director shall carry out the policies of the commission and board and shall adopt rules authorized by law to implement those policies."

{Internal References to 87-1-401: None.}

account the ability of forested lands to generate replacement tree growth and in accordance with:

- (a) the provisions of 87-1-201(9)(a)(iv);
- (b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and
- (c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5."

{ Internal References to 87-1-622:

87-1-201 x 87-1-621 x 87-1-621x 87-1-621 x
87-1-621x }

Section 49. Section 87-4-432, MCA, is amended to read:

"87-4-432. Alternative livestock advisory council -- appointment of members -- duties. (1) There is an alternative livestock advisory council to advise the department on the administration of alternative livestock ranches in this state.

(2) The alternative livestock advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department of livestock;

(b) one member of the fish, and wildlife, ~~and parks~~ commission or the department;

(c) one member who is a representative of the alternative livestock industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

established in 2-15-3402, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to state parks or recreational resources under Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, 5, 6, 8, and 9, the code commissioner is directed to change it to an appropriate reference to the state parks, recreation, and heritage board.

(3) Unless otherwise provided, wherever a reference to the Montana heritage preservation and development commission, meaning the commission established in 22-3-1002, appears in legislation enacted by the 2013 legislature that refers to functions of the commission related to heritage resources under Title 22, chapter 3, part 10, the code commissioner is directed to change it to an appropriate reference to the state parks, recreation, and heritage board.

NEW SECTION. Section 52. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 34, and the provisions of Title 2, chapter 15, part 34, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 2].

NEW SECTION. Section 53. {standard} Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].